

## **TENTATIVE RULINGS**

**FOR: April 11, 2012**

**Please note that the court will strictly enforce filing deadlines for papers filed in support of and in opposition to law and motion matters, and may exercise its discretion to disregard a late filed paper, pursuant to California Rules of Court, rule 3.1300(d).**

**When calculating filing deadlines for papers to be filed within a certain number of court days from a hearing date, parties should exclude court holidays.**

**Court Reporting Services** - As a result of statewide budget reductions, official court reporters are no longer provided by the Court in proceedings for which such services are not legally mandated. These proceedings include civil law and motion matters. If counsel wish to have the hearing on their civil law and motion matter reported, they have two options:

- Elect to use the services of a private local court reporter that the Napa County Bar Association has arranged to be present for the duration of all scheduled law and motion hearing calendars. There is a fee paid by the party directly to the court reporter for this service, and arrangements for payment can be made on the day of the hearing. For further information about the Bar Association program including fees, [click here](http://napacountybar.org/court_reporting.php) ([http://napacountybar.org/court\\_reporting.php](http://napacountybar.org/court_reporting.php))
- Arrange for a private court reporter of their choosing to be present.

Attorneys or parties should confer with each other to avoid having more than one court reporter present for the same matter.

### **CIVIL LAW & MOTION – Dept. B (Historic Courthouse)**

**Nantz v. Moto Meccanica**

**26-54491**

**PLAINTIFF’S MOTION TO DEEM MATTERS ADMITTED AND FOR SANCTIONS**

**TENTATIVE RULING:** Plaintiff’s motion to deem matters admitted is continued to April 16, 2012 at 8:30 a.m. in Department B, to allow defendant an opportunity to verify the responses to plaintiff’s request for admissions. Defendant

concedes that it has not served verified responses, but asserts that it is prevented from doing so because it is no longer an active Limited Liability Company. As plaintiff notes however, under applicable statutory law, a dissolved LLC continues to exist for purposes of defending actions against it. (See Corp. Code, §17354.) Accordingly, it is appropriate for a member of the dissolved LLC to sign the subject verifications. The court finds that, under the circumstances, it would be excessively harsh to order the matters admitted without giving defendant an opportunity to sign verifications. If no verifications have been provided before the April 16 hearing date, the court will grant the motion. The issue of sanctions is reserved until the next hearing.

In a “supplemental opposition,” filed on April 6, 2012, defendant argues that no verification is required because responses to a second set of requests for admissions contained objections only. The motion is directed to defendant’s responses to the first set of requests for admissions, not to the second set. Additionally, to the extent the argument might be meritorious, the court finds it was waived for not having been raised in the original opposition to the motion.

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**Reliance Bank v. Moore, et al.**

**26-58585**

HEARING ON OSC RE: APPOINTMENT OF RECEIVER AND ISSUANCE OF  
PRELIMINARY INJUNCTION

**TENTATIVE RULING:** The motion for appointment of receiver and for preliminary injunction is unopposed, appears meritorious, and is GRANTED, as prayed. The bond previously posted shall remain in effect.

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**Waters Contracting, Inc. v.**

**Point Arena Joint Union High School Dist., et al.**

**26-53657**

(1) MOTION OF DEFENDANT/CROSS-DEFENDANT DAVID CARPENTER FOR  
SUMMARY ADJUDICATION

(2) MOTION OF DEFENDANT/CROSS-COMPLAINANT/CROSS-DEFENDANT  
POINT ARENA JOINT UNION HIGH SCHOOL DISTRICT FOR SUMMARY  
ADJUDICATION

**TENTATIVE RULING:** The motions are GRANTED in part, as set forth below.

Point Arena Joint Union High School District (the District) and David Carpenter/Carpenter & Associates (Carpenter) are both moving for summary judgment as to plaintiff’s first cause of action for breach of contract, second cause of action for statutory penalties under Public Contract Code section 7107, and third cause of action for

statutory penalties under Public Contract Code section 20104. Both motions raise the same arguments and, therefore, will be addressed jointly in this ruling.

Movants contend the construction contract between plaintiff and the District is void because: (1) The construction plans were not approved by the DSA prior to making the contract; and (2) The bidding on the contract did not fully comply with the statutory competitive bidding requirements. The motions present largely questions of law, as the majority of the facts are not truly disputed.

Although movants present several statutes requiring prior DSA approval for a valid construction contract of this sort, it is not clear to the court that an initially invalid contract under these statutes does not become valid once approval is obtained. Thus, the court is unable to find the contract void on this basis.

The court is persuaded, however, that the contract is rendered void on account of the parties' failure to fully comply with competitive bidding requirements. Specifically, Public Contract Code section 20118.4, which does appear to apply to the contract at issue in this case, requires that any change orders with costs exceeding 10% of the original contract price be put to bid. That was not done in this case. A contract let without compliance with the statutory bidding requirements is void. (1 Witkin, Summary of California Law (10th Ed. 2005) Contracts § 647.) Because the first through third causes of action all hinge on the existence of an enforceable contract, summary adjudication appears appropriate.

The court does agree plaintiff may have some recourse through Public Contract Code section 5110. However, that remedy has not been sought in this action, nor is it at issue in the current motions.

The court's granting of summary adjudication is based upon the following evidence proffered by the movants, and not substantively disputed by the opponents of the motions: that plaintiff's change orders numbers 1 and 2 increased the contract amount by a net of \$238,418.85, which was more than 10% of the initial contract amount.

### **PROBATE CALENDAR – Dept. C (Historic Courthouse)**

**Conservatorship of Hendrickson**

**26-58414**

PETITION FOR APPOINTMENT OF LIMITED CONSERVATOR OF THE PERSON

### **APPEARANCE REQUIRED**

### **CIVIL LAW & MOTION – Dept. C (Historic Courthouse)**

**County of Napa v. Acree**

**26-58324**

HEARING ON OSC RE: PRELIMINARY INJUNCTION TO ABATE NUISANCE

**TENTATIVE RULING:** The unopposed application for preliminary injunction is substantiated by the pleadings and shall be GRANTED, as prayed.

DEFENDANT'S MOTION TO CHANGE VENUE

**TENTATIVE RULING:** Defendant's motion to change venue to Sacramento County is DENIED.

Prior to the motion being filed, plaintiff dismissed his conversion cause of action, which would have required transfer of this action to Sacramento County. The remaining causes of action for breach of contract and fraud are based upon an alleged loan plaintiff made to defendant. As agreed to by both sides, venue is proper in the County in which an agreement was entered into. Plaintiff's declaration in support of his opposition to the motion unequivocally states that the subject contract was entered into in Napa County, when he handed the loan check (a copy of which is attached to plaintiff's complaint) to defendant in St. Helena. Defendant's declaration in support of the motion does not specifically state where the parties were when the check was handed over. Rather, she states that she "knows of no basis for any assertion that the alleged contract...was entered into...in this County." On reply, defendant has submitted a supplemental declaration stating that the check was given to her in Sacramento County. She also argues in her reply that the location where she was given the check is not dispositive, because that act represented "performance" rather than execution or acceptance. Despite defendant's effort to distinguish the case, the court finds *Roff v. Crenshaw* to be on point and dispositive. (*Roff v. Crenshaw* (1945) 69 Cal.App.2d 537, 538, 540-541 [check is a contract subject to the laws governing contracts, and a check that was made, executed, and delivered in a certain county is a contract that was made in that county, which is, therefore, a proper county for trial of an action on the check.].) The court further finds that, even with her belated assertion concerning where she received the check, defendant has not met her burden of proof to rebut, by a preponderance of the evidence, the presumption that plaintiff's venue choice is proper. For these reasons, the motion is denied.

Both parties' sanctions requests are denied, as the court finds that the motion was neither made nor opposed in bad faith.

DEFENDANT'S MOTION FOR TERMINATING SANCTIONS

**TENTATIVE RULING:** Defendant's motion for terminating sanctions is denied without prejudice for the following reasons. First, the motion is based upon plaintiff's failure to appear for deposition after the court ordered him to do so. While a ruling on defendant's motion to compel attendance at deposition was made at the February 28, 2012 hearing, a court order was not filed until March 13, after the plaintiff had already

failed to appear at the subject deposition on March 9. In addition, the court file does not contain proof that notice of entry the Court's Order compelling attendance at deposition was ever served on either plaintiff or his then attorney of record. Finally, although it was technically procedurally proper to serve notice of this motion on plaintiff's attorney, defendant has known for some time that plaintiff's counsel would be seeking to withdraw at a hearing set for March 16, 2012, just 3 days after the instant motion was filed. In light of the severity of the requested sanction, the court wants to assure that plaintiff, himself, receives notice of any scheduled deposition and any subsequent motion.